

or not the claimant is doing substantial gainful activity only on that basis. The Board will still evaluate the work to decide whether it is substantial and gainful regardless of whether the claimant spends more time or less time at the job than workers who are not impaired and who are doing similar work as a regular means of their livelihood.

**§ 220.143 Evaluation guides for an employed claimant.**

(a) *General.* The Board uses several guides to decide whether the work the claimant has done shows that he or she is able to do substantial gainful activity.

(1) *The claimant's earnings may show the claimant has done substantial gainful activity.* The amount of the claimant's earnings from work the claimant has done may show that he or she has engaged in substantial gainful activity. Generally, if the claimant worked for substantial earnings, this will show that he or she is able to do substantial gainful activity. On the other hand, the fact that the claimant's earnings are not substantial will not necessarily show that the claimant is not able to do substantial gainful activity. The Board will generally consider work that the claimant is forced to stop after a short time because of his or her impairment(s) as an unsuccessful work attempt and the claimant's earnings from that work will not show that the claimant is able to do substantial gainful activity.

(2) *The Board considers only the amount the claimant earns.* The Board does not consider any income not directly related to the claimant's productivity when the Board decides whether the claimant has done substantial gainful activity. If the claimant's earnings are subsidized, the amount of the subsidy is not counted when the Board determines whether or not the claimant's work is substantial gainful activity. Thus, where work is done under special conditions, the Board only considers the part of the claimant's pay which the claimant actually "earns." For example, where a handicapped person does simple tasks under close and continuous supervision, the Board would not determine that the person

worked at the substantial gainful activity level only on the basis of the amount of pay. A railroad or non-railroad employer may set a specific amount as a subsidy after figuring the reasonable value of the employee's services. If the claimant's work is subsidized and the claimant's railroad and non-railroad employer does not set the amount of the subsidy or does not adequately explain how the subsidy was figured, the Board will investigate to see how much the claimant's work is worth.

(3) *If the claimant is working in a sheltered or special environment.* If the claimant is working in a sheltered workshop, the claimant may or may not be earning the amounts he or she is being paid. The fact that the sheltered workshop or similar facility is operating at a loss or is receiving some charitable contributions or governmental aid does not establish that the claimant is not earning all he or she is being paid. Since persons in military service being treated for a severe impairment usually continue to receive full pay, the Board evaluates work activity in a therapy program or while on limited duty by comparing it with similar work in the civilian work force or on the basis of reasonable worth of the work, rather than on the actual amount of the earnings.

(b) *Earnings guidelines—(1) General.* If the claimant is employed, the Board first considers the criteria in paragraph (a) of this section and § 220.145, and then the guides in paragraphs (b)(2), (3), (4), (5), and (6) of this section.

(2) *Earnings that will ordinarily show that the claimant has engaged in substantial gainful activity.* The Board will consider that the earnings from the employed claimant's work activities show that the claimant has engaged in substantial gainful activity if—

(i) The claimant's earnings averaged more than \$200 a month in calendar years prior to 1976;

(ii) The claimant's earnings averaged more than \$230 a month in calendar year 1976;

(iii) The claimant's earnings averaged more than \$240 a month in calendar year 1977;

(iv) The claimant's earnings averaged more than \$260 a month in calendar year 1978;

(v) The claimant's earnings averaged more than \$280 a month in calendar year 1979;

(vi) The claimant's earnings averaged more than \$300 a month in calendar years after 1979 and before 1990; or

(vii) The claimant's earnings averaged more than \$500 a month in calendar years after 1989.

(3) *Earnings that will ordinarily show that the claimant has not engaged in substantial gainful activity.* The Board will generally consider that the earnings from the employed claimant's work will show that the claimant has not engaged in substantial gainful activity if—

(i) The claimant's earnings averaged less than \$130 a month in calendar years before 1976;

(ii) The claimant's earnings averaged less than \$150 a month in calendar year 1976;

(iii) The claimant's earnings averaged less than \$160 a month in calendar year 1977;

(iv) The claimant's earnings averaged less than \$170 a month in calendar year 1978;

(v) The claimant's earnings averaged less than \$180 a month in calendar year 1979;

(vi) The claimant's earnings averaged less than \$190 a month in calendar years after 1979 and before 1990; or

(vii) The claimant's earnings averaged less than \$300 a month in calendar years after 1989.

(4) *If the claimant works in a sheltered workshop.* If the claimant is working in a sheltered workshop or a comparable facility especially set up for severely impaired persons, the claimant's earnings and activities will ordinarily establish that the claimant has not done substantial gainful activity if—

(i) The claimant's average earnings are not greater than \$200 a month in calendar years prior to 1976;

(ii) The claimant's average earnings are not greater than \$230 a month in calendar year 1976;

(iii) The claimant's average earnings are not greater than \$240 a month in calendar year 1977;

(iv) The claimant's average earnings are not greater than \$260 a month in calendar year 1978;

(v) The claimant's average earnings are not greater than \$280 a month in calendar year 1979; or

(vi) The claimant's average earnings are not greater than \$300 a month in calendar years after 1979 and before 1990; or

(vii) The claimant's average earnings are not greater than \$500 a month in calendar years after 1989;

(5) *If there is evidence showing that the claimant may have done substantial gainful activity.* If there is evidence showing that the claimant may have done substantial gainful activity, the Board will apply the criteria in paragraph (b)(6) of this section regarding comparability and value of services.

(6) *Earnings that are not high or low enough to show whether the claimant engaged in substantial gainful activity.* If the claimant's earnings, on the average, are between the amounts shown in paragraph (b)(2) and (3) of this section, the Board will generally consider other information in addition to the claimant's earnings, such as whether—

(i) The claimant's work is comparable to that of unimpaired persons in the claimant's community who are doing the same or similar occupations as their means of livelihood, taking into account the time, energy, skill, and responsibility involved in the work; or

(ii) The claimant's work, although significantly less than that done by unimpaired persons, is clearly worth the amounts shown in paragraph (b)(2) of this section, according to pay scales in the claimant's community.

**§ 220.144 Evaluation guides for a self-employed claimant.**

(a) *If the claimant is a self-employed claimant.* The Board will consider the claimant's activities and their value to the claimant's business to decide whether the claimant has engaged in substantial gainful activity if the claimant is self-employed. The Board will not consider the claimant's income alone since the amount of income the claimant actually receives may depend upon a number of different factors like capital investment, profit sharing